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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 MICHAEL EDELSTEIN,

12 Plaintiff,

13 v.

14 SINGLE ROOM OCCUPANCY
15 HOUSING CORP.,

16 Defendant.
17

Case No. CV 17-06042 BRO (AFM)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

18 On August 15, 2017, plaintiff filed a civil rights action pursuant to 42 U.S.C.
19 § 1983 and Title VI . (ECF No. 1 at 1.) He subsequently was granted leave to
20 proceed *in forma pauperis*. Plaintiff names one defendant, Single Room
21 Occupancy Housing Corp. (“SRO”), a nonprofit corporation. (*Id.*) Plaintiff
22 purports to be raising one claim pursuant to Title VI, 42 U.S.C. § 2000d, *et seq.*
23 (*Id.* at 1, 2, 5, 6.) Plaintiff seeks monetary damages. (*Id.* at 7-8.) The Complaint
24 arises from incidents that occurred while plaintiff was a resident of the Leonide
25 Hotel, a property owned and operated by SRO. (*Id.* at 2.)

26 In accordance with the terms of the “Prison Litigation Reform Act of 1995”
27 (“PLRA”), the Court has screened the Complaint prior to ordering service for
28 purposes of determining whether the action is frivolous or malicious; or fails to

1 state a claim on which relief may be granted; or seeks monetary relief against a
2 defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The
3 Court’s screening of the pleading under the foregoing statute is governed by the
4 following standards. A complaint may be dismissed as a matter of law for failure to
5 state a claim for two reasons: (1) lack of a cognizable legal theory; or
6 (2) insufficient facts under a cognizable legal theory. *See Balistreri v. Pacifica*
7 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Rosati v. Igbino*, 791
8 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether a complaint should be
9 dismissed for failure to state a claim under § 1915(e)(2), the court applies the same
10 standard as applied in a motion to dismiss pursuant to Rule 12(b)(6)). In
11 determining whether the pleading states a claim on which relief may be granted, its
12 allegations of material fact must be taken as true and construed in the light most
13 favorable to plaintiff. *See Love v. United States*, 915 F.2d 1242, 1245 (9th Cir.
14 1989). However, the “tenet that a court must accept as true all of the allegations
15 contained in a complaint is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*,
16 556 U.S. 662, 678 (2009). Nor is the Court “bound to accept as true a legal
17 conclusion couched as a factual allegation.” *Wood v. Moss*, 134 S. Ct. 2056, 2065
18 n.5 (2014) (citing *Iqbal*, 556 U.S. at 678). Rather, a court first “discounts
19 conclusory statements, which are not entitled to the presumption of truth, before
20 determining whether a claim is plausible.” *Salameh v. Tarsadia Hotel*, 726 F.3d
21 1124, 1129 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1322 (2014). Then, “dismissal
22 is appropriate where the plaintiff failed to allege enough *facts* to state a claim to
23 relief that is plausible on its face.” *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir.
24 2017) (internal quotation marks omitted, emphasis added).

25 Further, since plaintiff is appearing *pro se*, the Court must construe the
26 allegations of the pleading liberally and must afford plaintiff the benefit of any
27 doubt. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, the
28 Supreme Court has held that “a plaintiff’s obligation to provide the ‘grounds’ of his

1 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
2 recitation of the elements of a cause of action will not do. . . . Factual allegations
3 must be enough to raise a right to relief above the speculative level . . . on the
4 assumption that all the allegations in the complaint are true (even if doubtful in
5 fact).” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations
6 omitted, alteration in original); *see also Iqbal*, 556 U.S. at 678 (To avoid dismissal
7 for failure to state a claim, “a complaint must contain sufficient factual matter,
8 accepted as true, to ‘state a claim to relief that is plausible on its face.’ . . . A claim
9 has facial plausibility when the plaintiff pleads factual content that allows the court
10 to draw the reasonable inference that the defendant is liable for the misconduct
11 alleged.” (internal citation omitted)).

12 Following careful review of the Complaint, the Court finds that its
13 allegations appear insufficient to state any claim upon which relief may be granted.
14 Accordingly, the Complaint is dismissed with leave to amend. *See Rosati*, 791 F.3d
15 at 1039 (“A district court should not dismiss a *pro se* complaint without leave to
16 amend unless it is absolutely clear that the deficiencies of the complaint could not
17 be cured by amendment.”) (internal quotation marks omitted).

18 **If plaintiff desires to pursue this action, he is ORDERED to file a First**
19 **Amended Complaint no later than thirty (30) days after the date of this Order,**
20 **remedying the deficiencies discussed below.** Further, plaintiff is admonished
21 that, if he fails to timely file a First Amended Complaint, or fails to remedy the
22 deficiencies of this pleading as discussed herein, the Court will recommend that this
23 action be dismissed without leave to amend and with prejudice.¹

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25
26 ¹ Plaintiff is advised that this Court’s determination herein that the allegations in
27 the Complaint are insufficient to state a particular claim should not be seen as
28 dispositive of that claim. Accordingly, although this Court believes that you have
failed to plead sufficient factual matter in your pleading, accepted as true, to state a
claim to relief that is plausible on its face, you are not required to omit any claim or

1 **A. Title VI**

2 Although the title page of the Complaint references 42 U.S.C. § 1983 (ECF
3 No. 1 at 1), the Complaint only sets forth one Cause of Action. That cause of
4 action purports to be raised pursuant to Title VI, 42 U.S.C. § 2000d, *et seq.* (*Id.* at
5 6.)

6 As alleged in the Complaint, plaintiff, who is a recipient of a federal housing
7 subsidy, was a resident of the Leonide Hotel from April 2009 to August 2015. (*Id.*
8 at 2.) Plaintiff was “verbally and physically threatened and targeted by SRO
9 management based on his Jewish identity.” (*Id.*) Further, SRO was aware of the
10 “hostile environment towards Jewish tenants” at the property, and it “actively and
11 intentionally engaged in and condoned this pattern of” discrimination. (*Id.* at 7.)
12 Plaintiff alleges that he experienced “racist and anti-Semitic” graffiti and vandalism
13 to his door; a physical threat from the “manager of the Leonide Hotel”; the loss of
14 access to his unit when the manager attached a “door latch”; and “verbal threats and
15 anti-Semitic slurs.” (*Id.* at 3.) Plaintiff also alleges that SRO refused to investigate
16 threats, harassment, and repeated vandalism to his door, including a swastika
17 carved into the door. (*Id.*) Plaintiff then “suffered an illegal lockout on August
18 2015,” but he retained a key that he attempted to surrender upon being allowed
19 access to regain his belongings. (*Id.* at 4.) He made “failed” attempts to set up
20 meetings with “SRO management” in August and September 2015, and in October
21 2015, “he had a hostile confrontation with the manager who refused plaintiff
22 access.” (*Id.*) Plaintiff further alleges that the manager “pushed plaintiff” and told
23 plaintiff to surrender the key without being provided access to recover plaintiff’s

24 defendant in order to pursue this action. However, if you decide to pursue a claim
25 in a First Amended Complaint that this Court has found to be insufficient, then this
26 Court, pursuant to the provisions of 28 U.S.C. § 636, ultimately may submit to the
27 assigned district judge a recommendation that such claim be dismissed with
28 prejudice for failure to state a claim, subject to your right at that time to file
 Objections with the district judge as provided in the Local Rules Governing Duties
 of Magistrate Judges.

1 property. Plaintiff reported this incident and his earlier “concerns” to SRO, but
2 SRO refused to act. (*Id.*)

3 In the Complaint, plaintiff expressly alleges that SRO “has fostered and
4 sanctioned anti-Semitism from the highest levels and affirmed the actions of
5 hostile, aggressive, and disruptive behavior by their managers and agents.” (*Id.* at
6 4.) Title VI, however, does not prohibit discrimination on the basis of religion. *See,*
7 *e.g., Lubavitch-Chabad of Illinois, Inc. v. Nw. Univ.*, 6 F. Supp. 3d 806, 816 (N.D.
8 Ill. 2013) (“Title VI does not provide for protection against discrimination on the
9 basis of religion—only race, color, or national origin.”). Rather, 42 U.S.C.
10 § 2000d states: “No person in the United States shall, on the ground of race, color,
11 or national origin, be excluded from participation in, be denied the benefits of, or be
12 subjected to discrimination under any program or activity receiving Federal
13 financial assistance.” *See Alexander v. Sandoval*, 532 U.S. 275, 278 (2001). The
14 Complaint does not set forth any factual allegations that plausibly give rise to a
15 claim of discrimination based on “race, color, or national origin.”

16 Accordingly, even accepted as true, the allegations in the Complaint fail to
17 raise a right to relief above the speculative level. *See Twombly*, 550 U.S. at 555.

18 19 **B. Fair Housing Act**

20 Plaintiff’s Complaint does not purport to allege a claim pursuant to the Fair
21 Housing Act (“FHA”). The FHA, however, prohibits discrimination in the sale or
22 rental of housing to any person because religion, as well as race, color, sex, familial
23 status, or national origin. 42 U.S.C. §§ 3604-3605; *see, e.g., Taylor v. Rancho*
24 *Santa Barbara*, 206 F.3d 932, 935 (9th Cir. 2000); *see also Edwards v. Marin Park,*
25 *Inc.*, 356 F.3d 1058, 1062 (9th Cir. 2004) (applying the Fed. R. Civ. P. 8(a) to
26 FHA claims). Pursuant to Section 3604(a), it is unlawful to “make unavailable or
27 deny a dwelling to any person because of race, color, religion, sex, familial status,
28 or national origin.”

1 Based on the factual allegations in the Complaint, it appears to the Court that
2 plaintiff may be able to state a claim pursuant to the FHA. If plaintiff wishes to
3 pursue such a claim, he should set forth in a First Amended Complaint a simple,
4 concise, and direct statement of the factual and legal basis of his claims against the
5 defendant. *See* Fed. R. Civ. P. 8(a), 8(d).

6 *****

7 If plaintiff still desires to pursue this action, **he is ORDERED to file a First**
8 **Amended Complaint no later than thirty (30) days after the date of this Order,**
9 remedying the pleading deficiencies discussed above. The First Amended
10 Complaint should bear the docket number assigned in this case; be labeled "First
11 Amended Complaint"; and be complete in and of itself without reference to the
12 original Complaint, or any other pleading, attachment, or document.

13 The clerk is directed to send plaintiff a blank Central District civil rights
14 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished
15 that he must sign and date the civil rights complaint form, and he must use the
16 space provided in the form to set forth all of the claims that he wishes to assert in a
17 First Amended Complaint.

18 In addition, if plaintiff no longer wishes to pursue this action, he may request
19 a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure
20 41(a). The clerk also is directed to attach a Notice of Dismissal form for plaintiff's
21 convenience.

22 Plaintiff is further admonished that, if he fails to timely file a First Amended
23 Complaint, or fails to remedy the deficiencies of this pleading as discussed herein,
24 the Court will recommend that the action be dismissed with prejudice on the
25 grounds set forth above and for failure to diligently prosecute.

26 Finally if plaintiff wishes to receive free information and guidance
27 concerning self-representation, a *pro se* clinic is held within the Court at the
28 following times and location:

1 The United States Courthouse
2 312 N. Spring Street, Room G-19
3 Los Angeles, CA 90012
4 Mondays, Wednesdays and Fridays
5 9:30 am - 12:00 pm and 2:00 pm - 4:00 pm
6 (213) 385-2977, ext. 270

7 **IT IS SO ORDERED.**

8 DATED: 8/23/2017



ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE